

**IN THE HIGH COURT OF JUDICATURE AT BOMBAY
TESTAMENTARY AND INTESTATE JURISDICTION**

MISC. PETITION NO. 146 OF 2024

Khairunisa Sharafat Ali Sayed @
Khairunnisa Sharafat Ali Sayed ...Petitioner
Versus
M. A. Taqui @ Mohd. Asgar Taqui ...Respondent

Mrs. Mamta Dave Advocate for Petitioner.

CORAM : N. J. JAMADAR, J.
DATE : 30th JULY 2024

PC.:

1. Heard the learned Counsel for the Petitioner.
2. None appears for the non-consenting heir.
3. This petition is filed for grant of Heirship Certificate under Section 2 of the Bombay Regulation VIII of 1827.
4. M. A. Taqui @ Mohd. Asgar Taqui (the deceased) was the father of the petitioner. The deceased passed away on 2nd February 1960. At the time of his death, he had a fixed place of abode at Flat No.6, Second Floor, Murtuza Manzil, (old name Ali Manzil) 1st Tank Street, Nagpada, Mumbai.
5. In the petition it is averred that the deceased died intestate and despite diligent search, no testamentary writing or Will has

been found. The deceased has left behind four daughters. The wife of deceased late Dilshad Begum Mohd. Asgar Taqui @ Dilshad Begum Taqi died on 16th November 2012. A copy of her death certificate is annexed at Exhibit-A-2. One of the daughters, namely, Anwar Jahan Ishaque Shaikh passed away on 30th April 2022. A copy of the later's death certificate is annexed at Exhibit-A-3. The heirs mentioned at Serial Nos.3 and 4 of the table at paragraph No.4 of the petition, are the sons of late Anwar Jahan Ishaque Shaikh. Roshan Ara Nasiruddin Amin, the daughter of the deceased, whose particulars are furnished at serial No.2 of the table and Muhammad Salman Shaikh and Faizan Ishaque Shaikh, the sons of late Anwar Jahan Ishaq Shaikh, the daughter of the deceased, whose particulars are furnished at Serial No.3 and 4 of the table, have filed affidavits giving their consent for grant of Heirship Certificate.

6. Another daughter namely, Nahid Iqbal Mitha is the non-consenting heir. By an order dated 21st February 2024, proclamation was ordered to be issued against the non-consenting legal heir whose particulars are mentioned at serial No.5 of the table at paragraph No.4 of the petition. The petitioner has filed affidavit of service of proclamation.

7. The bailiff attached to the Sheriff of Mumbai filed affidavit to the effect that the proclamation was published on the High Court notice board and Collector's Office notice board and proclamation has also been served on the non-consenting heir by registered post. Copy of the confirmation issued by Indian Post which indicates that the article was delivered to the addressee on 28th May 2024 is annexed at Exhibit-C to the said affidavit.

8. The learned Counsel for the petitioner has also filed an affidavit of service of proclamation by e-mail. No caveat has been entered on behalf of the non-consenting heir.

9. The heirship certificate is required to lay claim over the property left behind by the deceased, and produce the same before Maharashtra Housing and Area Development Authority (MHADA).

10. Having considered the averments in the petition and documents in support thereof, especially the consent affidavits of the heirs mentioned at Serial Nos.2 to 4 of the table at paragraph No.4 of the petition, and the fact that the non-consenting heir has chosen not to appear despite the service of proclamation, I do not find any impediment in granting the heirship certificate.

Hence, the following order:

ORDER

- (i) The petition stands allowed in terms of prayer clause (a).
- (ii) Issue of proclamation is dispensed with.
- (iii) Grant of heirship certificate is expedited.

(N. J. JAMADAR, J.)